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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92061796
Party	Plaintiff Spansion LLC
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Submission	Motion to Amend Pleading/Amended Pleading
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Date	12/18/2015
Attachments	Second Amended Petition Canc No. 92061796 865709_1.pdf(36784 bytes) Exhibit A.pdf(2439729 bytes) Exhibit B-1.pdf(5533252 bytes) Exhibit B-2.pdf(617092 bytes) Exhibits C-E.pdf(889352 bytes) Exhibit F-1.pdf(4098057 bytes) Exhibit F-2.pdf(4383416 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

US Trademark Registration No. 4,721,431 for HYPERX SKYN
Registered: November 22, 2014

Spansion LLC,)	
)	
Petitioner,)	Cancellation No. 92061796
)	
v.)	
)	
Kingston Technology Corporation)	(After Answer is Filed, Filings
)	to be Made in Parent File,
Registrant)	Opposition No. 91218100)
_____)	

SECOND AMENDED PETITION FOR PARTIAL CANCELLATION/LIMITATION

Pursuant to the Trademark Trial and Appeal Board's Order dated December 9, 2015 in the Parent file of this consolidated case, Opposition No. 91218100, Petitioner, Spansion LLC ("Spansion"), herein files its Second Amended Petition for Partial Cancellation/Limitation. Leave to file this amended pleading was specifically granted by the Board in such consolidated order.

Spansion, a Delaware limited liability company located and doing business at 198 Champion Court, San Jose, CA 95134-1709 (formerly located at 915 DeGuigne Drive, Sunnyvale, California 94085), believes it is damaged and will continue to be damaged by Registration No. 4,721,431 for the mark HYPERX SKYN owned by Kingston, and hereby petitions to cancel and/or seeks to modify such registration as set forth herein.

The grounds for the petition are as follows:

A. Spansion and its Products.

1. Spansion is one of the leading manufacturers of computer memory products and embedded systems solutions, including a broad portfolio of flash memory, microcontrollers, mixed-signal and analog products, and system-on-chip solutions.

2. Spansion's embedded systems have a wide variety of applications, including in connection with consumer electronics, industrial and automotive applications. In the field of consumer electronics, Spansion's products are incorporated by its customers into a variety of consumer products that compete with and/or are related to Kingston's products at issue. These include video game systems (*e.g.*, the Sony PlayStation 4 and Sony PS Vita), video game controllers (*e.g.*, the Sony PS4 Dualshock Controller), wireless speaker systems (*e.g.*, the Sonos Playbar and Bose SoundDock Series III), and headphones (*e.g.*, Sony Stereo Headphones), as well as a variety of other similar products.

3. Spansion also produces a line of flexible microcontrollers that enhance the user experience with Human Machine Interfaces ("HMI"). These microcontrollers are used in end products that require functionality in terms of gesture or speech recognition, or touchpad controls, such as stereo systems, portable gaming devices, and smart watches. Certain end products, such as portable gaming devices, use touchpad controls in place of a traditional mouse (typically combined with an ancillary mousepad) as used in most computer gaming.

4. Spansion's parent company, Cypress Semiconductor Corporation ("Cypress"), also produces embedded systems that are integrated into consumer electronics products, such as smartphones, tablets, notebook computers, and video game systems. In some notebook computers, for example, Cypress products provide the trackpad functionality. Trackpad

functionality is competitive with and can replace the use of a traditional mouse (combined with ancillary mousepad).

5. In situations where Spansion's embedded systems are incorporated into a third-party end product, Spansion will generally provide a license that allows the third party to use Spansion's trademarks in connection with the third party's end product. The third party may indicate that a product incorporates particular Spansion technology and use its marks, including the HYPERRAM mark at issue herein and in consolidated Parent Opposition No. 91218100.

B. The Parties' Applications/Registrations for HYPER/HYPERX Marks.

6. Spansion has applied to register the mark HYPERRAM in connection with "volatile memory devices, namely, random-access memory semiconductor chips; applications and utility software for functions associated with random-access volatile memory devices, namely, code and data management software and random-access memory semiconductor chip drivers," (App. Serial No. 86/189,104).

7. Spansion's HYPERRAM application was published on July 1, 2014.

8. On August 28, 2014, Kingston filed its initial Notice of Opposition against Spansion's HYPERRAM application. *See* Opposition No. 91218100. Kingston filed an Amended Notice of Opposition on September 23, 2014. (A copy of which is attached as Exhibit A).

9. In its Amended Notice of Opposition, Kingston alleges that Spansion's HYPERRAM mark is merely descriptive or generic. In support of this claim, Kingston alleges: "The term 'hyper' is a Greek word meaning 'above' or 'more than.' It is used as a prefix to technical concepts and products to convey a more advanced or more automatic capability. Further, 'hyper' is a highly used laudatory term or prefix in the electronics and computer

industry and is the subject of many U.S. Trademark Registrations in conjunction with other terms and designs in International Class 009.” *See* Exhibit A, Kingston’s Amended Notice of Opposition, at ¶¶ 8 and 12.

10. Based on Kingston’s own arguments as to the descriptive nature of the term “HYPER,” in its Answer, Spansion counterclaimed seeking cancellation or limitation as to several of the HYPERX registrations asserted by Kingston in that proceeding. *See* Opposition No. 91218100, Spansion’s Answer and Counterclaims to Amended Notice of Opposition, filed February 12, 2015. After Kingston moved to dismiss these counterclaims, Spansion filed its First Amended Counterclaims on August 18, 2015. *See* Opposition No. 91218100, Spansion’s First Amended Counterclaims (a copy of which is attached hereto as Exhibit B). Kingston again moved to dismiss the First Amended Counterclaims, which motion was denied in the aforementioned December 9, 2015 Order.

11. Notwithstanding its statements in its Amended Notice of Opposition asserting the descriptive nature of the term “HYPER” for electronics and computer industry products, Kingston has embarked upon a pattern of seeking to register, without a claim of acquired distinctiveness, a family of “HYPERX” marks for a variety of electronic and computer goods. Included in this pattern is Kingston’s recent registration of the mark HYPERX SKYN for “Computer accessories, namely, mouse pads for use with electronic and online gaming,” in Class 9 (Reg. No. 4,721,431).

C. Descriptive Nature of Kingston’s Uses of HYPERX.

12. By virtue of its own allegations and logic, Kingston has conceded that the “HYPER” prefix in Kingston’s HYPERX SKYN mark describes Kingston’s electronic and

computer products, including its mouse pads, as being better or “more advanced” than other such products. Kingston has also conceded that the “HYPER” element is merely laudatory.

13. The character “X” in Kingston’s HYPERX SKYN mark is also descriptive and non-distinctive. The character “X” is used in the computer and electronics industries to refer to a product’s speed (from the term “X-speed” rating). For products used in connection with computer gaming, the character “X” is also used as shorthand for “extreme” gaming capability.

14. Thus, as used by Kingston, the “X” element of Kingston’s HYPERX SKYN mark describes mouse pads that offer increased speed and signifies that Kingston’s HYPERX SKYN products have functions and features optimized for the high-speed needs of the targeted “extreme” computer gaming industry.

15. Given these descriptive connotations, the composite element of Kingston’s HYPERX SKYN mark – HYPERX – is, when taken as a whole, merely descriptive when used in connection with computer and electronic products in the nature of “mouse pads for use with electronic and online gaming,” as the composite element merely describes an “advanced” product that offers increased precision and accuracy, and which allows for very fast use for “extreme” computer gaming applications.

16. Indeed, statements made by Kingston in press releases and on its website confirm that Kingston’s HYPERX SKYN mouse pads are targeted to “gamers, overclockers and enthusiasts.” *See, e.g.,* Exhibit C.

17. According to Kingston, its HYPERX SKYN mouse pads come with two different surface options – a “control surface for increased gaming accuracy” and a “speed surface for fast-moving action.” These mouse pads also offer a “[p]aper-thin gaming-grade hard surface for a seamless transition between desktop and mouse pad.” *See, e.g.,* Exhibit D.

18. Third parties describing or reviewing Kingston's HYPERX products have also noted that Kingston's "HYPERX logo is reserved for [Kingston's] fastest products," and that such products are targeted at "the gaming and high performance market." *See, e.g.*, Exhibit E.

19. Kingston's public statements about its HYPERX SKYN mouse pads demonstrate that the composite element HYPERX is used to describe the fact that Kingston's computer and electronic products covered by Registration No. 4,721,431 are "advanced" in offering increased speed, high levels of accuracy and precision, and are designed for use by "extreme" gamers.

D. Competition and Damage.

20. The parties' assertions, claims, and counterclaims in Parent Opposition No. 91218100 are directly related to the claims in the instant cancellation proceeding, in that both proceedings involve, at least in part, claims that the term "HYPER" is descriptive when used in connection with computer and electronics products.

21. Spansion and/or its customers are competitors of Kingston with respect to the sale of computer and electronics products generally. Spansion's products are incorporated by its customers into a variety of consumer electronics products that compete with and/or are directly related to Kingston's products at issue as set forth in Paragraphs 2-4 herein. Spansion and/or its customers sell computer and electronics products that are related to the Kingston products at issue in this proceeding. In the alternative, the Kingston products at issue in this proceeding are within the natural expansion of the business of Spansion and/or its customers.

22. For example, Spansion promotes itself as a global leader in "Flash memory-based embedded systems solutions at the heart of electronic systems, connecting, controlling, storing and powering everything from automotive electronics and industrial systems to the highly interactive and immersive consumer devices that are enriching daily lives." Spansion products

reflect the “[c]onsumers’ appetite for instant access to data and applications, ... [with homes using] interfaces with more connected electronic devices – from gaming and TVs to future appliances. The devices of the future will give consumers more control over home entertainment ... Spansion supports the consumer segment with a broad array of memory, processing and analog products.” *See* Exhibit F (Spansion corporate brochure, relevant pages attached).

23. Spansion and/or its customers currently use HYPER-based terms in connection with the marketing and sale of their products, and have an interest in continuing to do so. Thus, Spansion and its customers are damaged by Kingston’s attempt to register the HYPERX-based mark at issue in this proceeding while simultaneously taking inconsistent positions to assert descriptiveness of the “HYPER” element in Spansion’s mark at issue in pending Opposition No. 91218100.

24. Spansion and/or its customers are further damaged by Kingston’s attempts to develop a broadening family of “HYPERX” marks in the electronics and computer industries. Kingston’s creation and expansion of a family of “HYPERX” marks potentially will expand the strength and scope of protection provided to such marks, including potentially leading to protection against similar marks on non-competing, but related products. Thus, the registration of such marks may make it more difficult for Spansion and/or its customers to use other HYPER-based terms in connection with their businesses for competing and related products.

**Count I: Request for Disclaimer of “HYPERX” in Reg. No. 4,721,431
on the Ground that “HYPERX” is Merely Descriptive**

25. Spansion repeats and re-alleges the allegations of Paragraph 1 through 16 as though fully set forth herein.

26. Kingston claims in its Amended Notice of Opposition against Spansion’s HYPERRAM mark that the term “HYPER” is laudatory and descriptive of electronics and

computer products. Kingston alleges that: “The term ‘hyper’ is a Greek word meaning ‘above’ or ‘more than.’ It is used as a prefix to technical concepts and products to convey a more advanced or more automatic capability. Further, ‘hyper’ is a highly used laudatory term or prefix in the electronics and computer industry ...” *See* Exhibit A, Kingston’s Amended Notice of Opposition, at ¶¶ 8 and 12.

27. By its logic and allegations, Kingston has conceded that the “HYPER” element of its HYPERX SKYN mark is merely laudatory and descriptive of the electronics and computer products set forth in Reg. No. 4,721,431, namely “mouse pads for use with electronic and online gaming,” in that the term describes them as having an advanced capability that is superior to that of competing goods.

28. Further, the letter “X” element of Kingston’s HYPERX SKYN mark is non-distinctive and descriptive, as it is intended to convey that Kingston’s HYPERX SKYN mouse pads offer increased speed and have functions and features intended for use by “extreme” gamers.

29. By Kingston’s own logic and public pronouncements, then, the composite term HYPERX element of the mark HYPERX SKYN, taken as a whole, is merely descriptive of its mouse pads, as being purportedly “advanced” products that offer precision and accuracy and that provide fast performance for users in the “extreme” gaming industry.

30. As set forth in its Answer in Opposition No. 91218100, Spansion denies that the prefix “HYPER” is a merely descriptive term as applied to electronic and computer goods or that its mark HYPERRAM is descriptive. However, to the extent that the Trademark Trial and Appeal Board finds otherwise, Kingston’s use of the prefix “HYPER” in conjunction with the non-distinctive character “X” to form the composite mark HYPERX for computer and

electronics products, namely “mouse pads for use with electronic and online gaming,” is likewise merely descriptive, as it simply constitutes a combination of the same prefix “HYPER” and the highly descriptive term “X,” collectively used to connote high-speed and extreme gaming functionality.

WHEREFORE, Spansion respectfully requests that, if Opposition No. 91218100 is sustained, Kingston’s Registration No. 4,721,431 likewise be restricted and modified to include a disclaimer of the term “HYPERX” on the basis of descriptiveness, pursuant to Section 18 of the Lanham Act, 15 U.S.C. § 1068.

Respectfully submitted,

PATTISHALL, McAULIFFE, NEWBURY,
HILLIARD & GERALDSON LLP

Date: December 18, 2015

By: /Belinda J. Scrimenti/

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Attorneys for Petitioner, Spansion LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Second Amended Petition for Partial Cancellation/Limitation has been served upon the following counsel for Defendant Kingston Technology Corporation:

John D. McConaghy, Esq.
Novak Druce Connolly Bove + Quigg LLP
North Tower Suite 2300
333 South Grand Avenue
Los Angeles, CA 90071-1504

by United States mail, postage prepaid, this 18th day of December 2015.

/Belinda J. Scrimenti/
Belinda J. Scrimenti

EXHIBIT A

ESTTA Tracking number: **ESTTA628686**

Filing date: **09/23/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91218100
Party	Plaintiff Kingston Technology Corporation
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Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	John D. McConaghy
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Signature	/John D. McConaghy/
Date	09/23/2014
Attachments	Kingston4amdopp.pdf(170294 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

KINGSTON TECHNOLOGY CORPORATION,)	Opposition No. 91218100
A California corporation,)	
)	
Opposer.)	
vs.)	
)	
SPANSION LLC,)	
A Limited Liability Company,)	
)	
Applicant.)	

AMENDED NOTICE OF OPPOSITION

In the matter of an application to register a trademark, Serial No. 86/189,104, filed February 10, 2014, for the mark HYPERRAM, in the name of Spansion LLC (hereinafter "Applicant"), published for opposition in the Trademark Official Gazette of July 1, 2014 at page TM 568, Opposer, Kingston Technology Corporation, believes it will be damaged by issuance of the applied for registration of the mark HYPERRAM, and hereby opposes same. The Applicant having not yet answered, Opposer presents this Amended Notice of Opposition without leave of the Trademark Trial and Appeal Board.

The grounds for opposition are as follows:

COUNT I – MERELY DESCRIPTIVE

1. Opposer, Kingston Technology Corporation, is a corporation duly organized and existing under the laws of the State of California and has a place of business at 17600 Newhope Street, Fountain Valley, California 92708. Opposer markets, distributes and sells memory devices including random access memory (RAM), memory modules, solid state drives for data storage devices and flash drives.

2. Commencing prior to the filing date of the opposed application, Opposer has, and is now, engaged in the distribution and sale in commerce in the United States of the products listed under and in connection with the U.S. registered trademarks HYPERX and HYPERX BEAST (collectively, Opposer's "HYPERX marks"). Opposer continually has used the HYPERX marks in commerce in connection with Opposer's products produced, advertised, offered for sale and sold by Opposer to identify, designate and distinguish these products from the products of others.

3. Opposer is the owner of the following U.S. Trademark Registrations for its HYPERX marks:

<u>U.S. Reg. No.</u>	<u>Issue Date</u>
Reg. No. 2,848,874	June 1, 2004
Reg. No. 4,162,334	June 19, 2012
Reg. No. 4,316,905	April 9, 2013
Reg. No. 4,452,249	December 17, 2013

Said registrations are valid, subsisting and constitute *prima facie* and/or conclusive evidence of Opposer's ownership and exclusive right to use the HYPERX marks in commerce in connection with the goods set forth in these Registrations.

4. Since Opposer's initial use of the HYPERX marks, Opposer has used, advertised, produced, offered and sold in commerce its goods under and in connection with the HYPERX marks to the public directly by way of the internet, through Internet retailers, distributors and brick and mortar retail outlets with the result that Opposer's customers and the public in general have come to know and recognize and associate the HYPERX marks with Opposer and/or with the goods produced, advertised, marketed, distributed and sold directly or indirectly by Opposer. Opposer has thus built up goodwill in connection with the sale of its products under Opposer's HYPERX marks.

5. On February 10, 2014, Applicant filed the opposed Application to register the mark HYPERRAM. The opposed Application was accorded Serial No. 86/189,104, and was published for opposition in the Official Gazette on July 1, 2014 at page TM 568 for the following goods in International Class 009:

Volatile memory devices, namely, random-access memory semiconductor chips; applications and utility software for functions associated with random-access volatile memory devices, namely, code and data management software and random-access memory semiconductor chip drives.

6. The HYPERRAM mark sought to be registered by Applicant is descriptive of memory devices and Opposer and has an equal right to use the term descriptively.

7. The term HYPERRAM, whether one word or two, is used in the electronics and computer industry to describe random-access memories which are active or of significant capabilities.

8. The Applicant is not exclusive in the use of "hyper" with "ram" to describe random access memory. The term "hyper" is a Greek work meaning "above" or "more than." It is used as a prefix to technical concepts and products to convey a more advanced or more automatic capability. Further, "hyper" is a highly used laudatory term or prefix in the electronics and computer industry and is the subject of many U.S. Trademark Registrations in conjunction with other terms and designs in International Class 009.

COUNT II – MERELY GENERIC

9. Opposer restates and realleges Paragraphs 1 through 5, inclusive, above, of this Notice of Opposition, and hereby incorporates same as if fully set forth herein.

10. The HYPERRAM mark sought to be registered by Applicant is generic of memory devices and Opposer, Kingston, has an equal right to use the term generically.

11. The term HYPERRAM, whether one word or two, is used in the electronics and computer industry to mean and identify random-access memories which are active or of significant capabilities.

12. The Applicant is not exclusive in the use of "hyper" with "ram" to describe random access memory. The term "hyper" is a Greek work meaning "above" or "more than." It is used as a prefix to technical concepts and products to

convey a more advanced or more automatic capability. Further, "hyper" is a highly used laudatory term or prefix in the electronics and computer industry and is the subject of many U.S. Trademark Registrations in conjunction with other terms and designs in International Class 009.

WHEREFORE, Opposer Kingston believes and alleges that it will be damaged by registration of the HYPERRAM mark of Application Serial No. 86/189,104, as aforesaid, and prays that:

- A. Judgment in the present opposition be entered in favor of Opposer on Counts I and II;
- B. The present Opposition is sustained; and
- C. Registration of Application Serial No. 86/189,104 be rejected and refused.

Respectfully submitted,

KINGSTON TECHNOLOGY CORPORATION

Date: September 23, 2014

By /John D. McConaghy/ (Electronic signature)

John D. McConaghy
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this paper is being served upon all parties to this proceeding at the address recorded in the following manner on the date this filing is submitted, SEPTEMBER 23, 2014.

By Mail to:

Belinda J. Scrimenti
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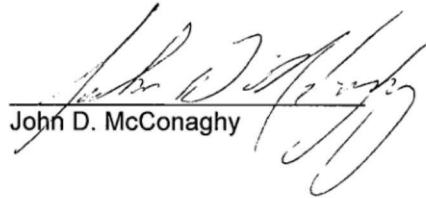

John D. McConaghy

EXHIBIT B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

US Trademark Application Serial No. 86/189,104 for HYPERRAM
Filed: February 10, 2014
Published: July 1, 2014

Kingston Technology Corporation,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91218100
)	
Spansion LLC,)	
)	
Applicant.)	
_____)	

SPANSION'S FIRST AMENDED COUNTERCLAIMS

Pursuant to the Trademark Trial and Appeal Board's Order dated July 24, 2015, Applicant Spansion LLC ("Applicant" or "Spansion") herein files its First Amended Counterclaims. In light of the Board's Order, no motion or further leave is required for amendment.

Spansion, a Delaware limited liability company located and doing business at 198 Champion Court, San Jose, California 95134-1709 (formerly located at 915 DeGuigne Drive, Sunnyvale, California 94085), believes it is damaged and will continue to be damaged by Registration Nos. 4,162,334 and 4,316,905 for the mark HYPERX and Registration No. 4,452,249 for the mark HYPERX BEAST owned by Opposer Kingston Technology Corporation ("Opposer"), and hereby petitions to cancel or modify such marks as set forth herein.

As grounds for its counterclaim petition, Spansion alleges as follows:

1. Spansion applied to register the trademark HYPERRAM for "volatile memory devices, namely, random-access memory semiconductor chips; applications and utility software

for functions associated with random-access volatile memory devices, namely, code and data management software and random-access memory semiconductor chip drivers.” Application Serial No. 86/189,104.

2. Spansion's HYPERRAM application was published on July 1, 2014.

3. Opposer filed its first Notice of Opposition on August 28, 2014. *See* Opposition No. 91218100. Opposer filed an Amended Notice of Opposition on September 23, 2014. (A copy of the Amended Notice of Opposition is attached as Exhibit A).

4. In its Amended Notice of Opposition, Opposer alleges that Applicant's HYPERRAM mark is merely descriptive or generic. In support of this claim, Opposer alleges: “The term 'hyper' is a Greek word meaning 'above' or 'more than.' It is used as a prefix to technical concepts and products to convey a more advanced or more automatic capability. Further, 'hyper' is a highly used laudatory term or prefix in the electronics and computer industry and is the subject of many U.S. Trademark Registrations in conjunction with other terms and designs in International Class 009.” *See* Exhibit A, Opposer's Amended Notice of Opposition, at ¶¶ 8 and 12.

5. Notwithstanding its statements in its Amended Notice of Opposition asserting the descriptive nature of the term “HYPER” for electronics and computer industry products, including Applicant’s memory devices, Opposer has embarked upon a pattern of seeking to register, without a claim of acquired distinctiveness, a family of “HYPERX” marks for a variety of electronic and computer goods. Such registrations include Trademark Registration No. 4,162,334 for the mark HYPERX for “solid state drives for data storage devices” in Class 9; Trademark Registration No. 4,316,905 for the mark HYPERX for “blank USB flash drives” in Class 9; and Trademark Registration No. 4,452,249 for the mark HYPERX BEAST for

“dynamic random access memory (DRAM)” in Class 9 (collectively, “Opposer's HYPERX Marks”).

6. By virtue of its own allegations and logic, Opposer has conceded that the “HYPER” prefix in Opposer's HYPERX Marks describes Opposer’s data storage and memory devices, including its own “solid state drives for data storage devices,” “blank USB flash drives,” and “dynamic random access memory (DRAM),” as being better or “more advanced,” or having a “more automatic capability” than other such products. Opposer has also conceded that the “HYPER” element is merely laudatory.

7. The character “X” in Opposer’s HYPERX Marks is also descriptive and non-distinctive. The character “X” is used in the computer and electronics industries, and particularly in the fields of data storage and memory devices, to refer to a memory or data storage product's speed at reading or writing data (*i.e.*, its “X-speed” rating). For such products used in connection with computer gaming, the character “X” is also used as shorthand for “extreme” gaming capability.

8. Thus, as used by Opposer, the “X” element of Opposer’s HYPERX Marks describes data storage and memory products that offer faster/higher speeds, and signifies that the Opposer’s HYPERX products have functions and features intended to satisfy the high-speed needs of the targeted “extreme” computer gaming industry.

9. Given these descriptive connotations, Opposer's composite mark – HYPERX – is, when taken as a whole, merely descriptive when used in connection with computer and electronic products in the nature of data storage and memory products, as the composite mark merely describes an “advanced” computer data storage or memory product with very fast speeds for use in “extreme” computer gaming applications.

10. Indeed, statements made by Opposer in press releases and on its website confirm that Opposer's HYPERX solid state drives, USB flash drives, DRAM products, and other computer and electronics products, are targeted to “gamers, overclockers and enthusiasts.” *See, e.g.,* Exhibit B.

11. According to Opposer, its HYPERX solid state drives (the subject of Reg. No. 4,162,334) are designed to “dramatically improve the performance of a PC with higher speeds, greater stability and greater reliability.” Opposer also claims that its HYPERX solid state drives allow gamers and other users to “load games and applications faster, increase frames per second (FPS) and quickly transfer and edit large media files.” *See, e.g.,* Exhibit C.

12. Similarly, Opposer claims that its HYPERX USB flash drives (the subject of Reg. No. 4,316,905) offer “extreme speed” and “the fastest speeds from Kingston.” *See, e.g.,* Exhibit D.

13. Opposer also claims that its HYPERX BEAST dynamic random access memory products (the subject of Reg. No. 4,452,249) offer “ultra-fast” speeds and are “perfect for hardcore gamers.” *See, e.g.,* Exhibit E.

14. Third parties describing or reviewing Opposer's HYPERX products have also noted that Opposer's “HYPERX logo is reserved for [Opposer's] fastest products,” and that such products are targeted at “the gaming and high performance market.” *See, e.g.,* Exhibit F.

15. Opposer's public statements about its HYPERX solid state drives and USB flash drives and its HYPERX BEAST dynamic random access memory products, demonstrate that the composite mark HYPERX is used to describe the fact that Opposer's computer memory products are “advanced,” offer very fast or extreme speeds, and are designed for use by “extreme” gamers.

COUNTERCLAIM I:
Petition to Cancel Reg. No. 4,162,334 for HYPERX as Merely Descriptive

16. Spansion repeats and re-alleges the allegations of Paragraphs 1 through 15 as though fully set forth herein.

17. Opposer claims in its Amended Notice of Opposition against Spansion's HYPERRAM mark that the term “HYPER” is laudatory and descriptive of Spansion's computer memory products. Opposer alleges that: “The term 'hyper' is a Greek word meaning 'above' or 'more than.' It is used as a prefix to technical concepts and products to convey a more advanced or more automatic capability. Further, 'hyper' is a highly used laudatory term or prefix in the electronics and computer industry ...” See Exhibit A, Opposer's Amended Notice of Opposition, at ¶¶ 8 and 12.

18. By its logic and allegations, Opposer has conceded that the “HYPER” element of its mark HYPERX is merely laudatory and descriptive of its own computer data storage and memory products, namely “solid state drives for data storage devices,” in that the term describes them as having an advanced capability that is superior to that of competing goods.

19. Further, the letter “X” element of Opposer's HYPERX mark is non-distinctive and descriptive, as it is intended to convey that Opposer's HYPERX solid state drives transfer data at high speeds, are faster than other solid state drive products for storage devices, and have functions and features intended for use by “extreme” gamers.

20. By Opposer's own logic and public pronouncements, then, its composite mark HYPERX, taken as a whole, is merely descriptive of its “solid state drives for data storage devices,” as being purportedly “advanced,” very fast products targeted at “extreme” gamers.

21. As set forth in its Answer, Spansion denies that the prefix “HYPER” is a merely descriptive term as applied to electronic and computer goods or that its mark HYPERRAM is

descriptive. However, to the extent that the Trademark Trial and Appeal Board finds otherwise, Opposer's use of the prefix "HYPER" in conjunction with the non-distinctive character "X" to form the composite mark HYPERX for computer storage and memory products, namely "solid state drives for data storage devices," is likewise merely descriptive, as it simply constitutes a combination of the same prefix "HYPER" and the highly descriptive term "X," collectively used to connote high-speed and extreme gaming functionality.

WHEREFORE, Spansion respectfully requests that, if Opposer's opposition is sustained, that Opposer's Registration No. 4,162,334 likewise be cancelled on the basis of descriptiveness.

COUNTERCLAIM II:
Petition to Cancel Reg. No. 4,316,905 for HYPERX as Merely Descriptive

22. Spansion repeats and re-alleges the allegations of Paragraphs 1 through 21 as though fully set forth herein.

23. Opposer claims in its Amended Notice of Opposition against Spansion's HYPERRAM mark that the term "HYPER" is laudatory and descriptive of Spansion's computer memory products. Opposer alleges that: "The term 'hyper' is a Greek word meaning 'above' or 'more than.' It is used as a prefix to technical concepts and products to convey a more advanced or more automatic capability. Further, 'hyper' is a highly used laudatory term or prefix in the electronics and computer industry ..." See Exhibit A, Opposer's Amended Notice of Opposition, at ¶¶ 8 and 12.

24. By its logic and allegations, Opposer has conceded that the "HYPER" element of its mark HYPERX is merely laudatory and descriptive of its own computer flash drive memory products, namely "blank USB flash drives," in that the term describes them as having an advanced capability that is superior to that of competing goods.

25. Further, the letter “X” element of Opposer's HYPERX mark is non-distinctive and descriptive, as it is intended to convey that Opposer's HYPERX USB flash drives transfer data at high speeds, are faster than other USB flash drive products, and have functions and features intended for use by “extreme” gamers.

26. By Opposer's own logic and public pronouncements, then, its composite mark HYPERX, taken as a whole, is merely descriptive of its “blank USB flash drives,” as being purportedly “advanced,” very fast products targeted at “extreme” gamers.

27. As set forth in its Answer, Spansion denies that the prefix “HYPER” is a merely descriptive term as applied to electronic and computer goods or that its mark HYPERRAM is descriptive. However, to the extent that the Trademark Trial and Appeal Board finds otherwise, Opposer's use of the prefix “HYPER” in conjunction with the non-distinctive character “X” for computer memory products in the mark HYPERX is likewise merely descriptive, as it simply constitutes a combination of the same prefix “HYPER” and the highly descriptive term “X,” collectively used to connote high-speed and extreme gaming functionality.

WHEREFORE, Spansion respectfully requests, if Opposer's opposition is sustained, that Opposer's Registration No. 4,316,905 likewise be cancelled on the basis of descriptiveness.

COUNTERCLAIM III:
Restriction of Reg. No. 4,452,249 for HYPERX BEAST

28. Spansion repeats and re-alleges the allegations of Paragraphs 1 through 27 as though fully set forth herein.

29. Opposer claims in its Amended Notice of Opposition against Spansion's HYPERRAM mark that the term “HYPER” is laudatory and descriptive of Spansion's computer memory products. Opposer alleges that: “The term 'hyper' is a Greek word meaning 'above' or 'more than.' It is used as a prefix to technical concepts and products to convey a more advanced

or more automatic capability. Further, 'hyper' is a highly used laudatory term or prefix in the electronics and computer industry ...” *See* Exhibit A, Opposer's Amended Notice of Opposition, at ¶¶ 8 and 12.

30. By its logic and allegations, Opposer has conceded that the “HYPER” element of its mark HYPERX BEAST is merely laudatory and descriptive of its own computer memory products, namely “dynamic random access memory (DRAM),” in that the term describes them as having an advanced capability that is superior to that of competing goods.

31. Further, the letter “X” element of Opposer's HYPERX BEAST mark is non-distinctive and descriptive, as it is intended to convey that Opposer's HYPERX BEAST dynamic random access memory (DRAM) products transfer data at high speeds, are faster than other dynamic random access memory (DRAM) products, and have functions and features intended for use by “extreme” gamers.

32. By Opposer's own logic and public pronouncements, then, the composite HYPERX element of the mark HYPERX BEAST, taken as a whole, is merely descriptive of its dynamic random access memory (DRAM) as being purportedly “advanced,” very fast products, that are targeted at “extreme” gamers.

33. As set forth in its Answer, Spansion denies that the prefix “HYPER” is a merely descriptive term as applied to electronic and computer goods or that its mark HYPERRAM is descriptive. However, to the extent that the Trademark Trial and Appeal Board finds otherwise, Opposer's use of the prefix “HYPER” in conjunction with the non-distinctive character “X” for computer memory products in the mark HYPERX BEAST is likewise merely descriptive, as it simply constitutes a combination of the same prefix “HYPER” and the highly descriptive term “X,” collectively used to connote high-speed and extreme gaming functionality.

34. Therefore, Registration No. 4,452,249 should be restricted and modified to include a disclaimer of the term “HYPERX” under Section 18 of the Lanham Act, 15 U.S.C. §1068, thus reflecting only the distinctive element of “BEAST” as non-descriptive.

WHEREFORE, Spansion respectfully requests, if Opposer's opposition is sustained, that Opposer's Registration No. 4,452,249 likewise be restricted to include a disclaimer of the term “HYPERX” in Opposer's HYPERX BEAST mark on the basis of descriptiveness.

Respectfully submitted,

PATTISHALL, McAULIFFE, NEWBURY,
HILLIARD & GERALDSON LLP

Date: August 18, 2015

By: /Belinda J. Scrimenti/

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Attorneys for Applicant, Spansion LLC

CERTIFICATE OF SERVICE

I, Belinda J. Scrimenti, hereby certify that a true and accurate copy of the foregoing Spansion's First Amended Counterclaims was by first class mail, postage prepaid, with a courtesy copy by email, this 18th day of August 2015, on the following counsel for Opposer:

John D. McConaghy
Novak Druce Connolly Bove + Quigg LLP
North Tower Suite 2300
333 South Grand Avenue
Los Angeles, CA 90071-1504

By: /Belinda J. Scrimenti/
Belinda J. Scrimenti

EXHIBIT A

ESTTA Tracking number: **ESTTA628686**

Filing date: **09/23/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91218100
Party	Plaintiff Kingston Technology Corporation
Correspondence Address	John D. McConaghy Novak Druce Connolly Bove + Quigg LLP North Tower Suite 2300333 South Grand Avenue Los Angeles, CA 90071-1504 UNITED STATES jmccconaghy@novakdruce.com, trademarks@novakdruce.com, cy-ang@sjclawpc.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	John D. McConaghy
Filer's e-mail	jmccconaghy@novakdruce.com
Signature	/John D. McConaghy/
Date	09/23/2014
Attachments	Kingston4amdopp.pdf(170294 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

KINGSTON TECHNOLOGY CORPORATION,)	Opposition No. 91218100
A California corporation,)	
)	
Opposer.)	
vs.)	
)	
SPANSION LLC,)	
A Limited Liability Company,)	
)	
Applicant.)	

AMENDED NOTICE OF OPPOSITION

In the matter of an application to register a trademark, Serial No. 86/189,104, filed February 10, 2014, for the mark HYPERRAM, in the name of Spansion LLC (hereinafter "Applicant"), published for opposition in the Trademark Official Gazette of July 1, 2014 at page TM 568, Opposer, Kingston Technology Corporation, believes it will be damaged by issuance of the applied for registration of the mark HYPERRAM, and hereby opposes same. The Applicant having not yet answered, Opposer presents this Amended Notice of Opposition without leave of the Trademark Trial and Appeal Board.

The grounds for opposition are as follows:

COUNT I – MERELY DESCRIPTIVE

1. Opposer, Kingston Technology Corporation, is a corporation duly organized and existing under the laws of the State of California and has a place of business at 17600 Newhope Street, Fountain Valley, California 92708. Opposer markets, distributes and sells memory devices including random access memory (RAM), memory modules, solid state drives for data storage devices and flash drives.

2. Commencing prior to the filing date of the opposed application, Opposer has, and is now, engaged in the distribution and sale in commerce in the United States of the products listed under and in connection with the U.S. registered trademarks HYPERX and HYPERX BEAST (collectively, Opposer's "HYPERX marks"). Opposer continually has used the HYPERX marks in commerce in connection with Opposer's products produced, advertised, offered for sale and sold by Opposer to identify, designate and distinguish these products from the products of others.

3. Opposer is the owner of the following U.S. Trademark Registrations for its HYPERX marks:

<u>U.S. Reg. No.</u>	<u>Issue Date</u>
Reg. No. 2,848,874	June 1, 2004
Reg. No. 4,162,334	June 19, 2012
Reg. No. 4,316,905	April 9, 2013
Reg. No. 4,452,249	December 17, 2013

Said registrations are valid, subsisting and constitute *prima facie* and/or conclusive evidence of Opposer's ownership and exclusive right to use the HYPERX marks in commerce in connection with the goods set forth in these Registrations.

4. Since Opposer's initial use of the HYPERX marks, Opposer has used, advertised, produced, offered and sold in commerce its goods under and in connection with the HYPERX marks to the public directly by way of the internet, through Internet retailers, distributors and brick and mortar retail outlets with the result that Opposer's customers and the public in general have come to know and recognize and associate the HYPERX marks with Opposer and/or with the goods produced, advertised, marketed, distributed and sold directly or indirectly by Opposer. Opposer has thus built up goodwill in connection with the sale of its products under Opposer's HYPERX marks.

5. On February 10, 2014, Applicant filed the opposed Application to register the mark HYPERRAM. The opposed Application was accorded Serial No. 86/189,104, and was published for opposition in the Official Gazette on July 1, 2014 at page TM 568 for the following goods in International Class 009:

Volatile memory devices, namely, random-access memory semiconductor chips; applications and utility software for functions associated with random-access volatile memory devices, namely, code and data management software and random-access memory semiconductor chip drives.

6. The HYPERRAM mark sought to be registered by Applicant is descriptive of memory devices and Opposer and has an equal right to use the term descriptively.

7. The term HYPERRAM, whether one word or two, is used in the electronics and computer industry to describe random-access memories which are active or of significant capabilities.

8. The Applicant is not exclusive in the use of "hyper" with "ram" to describe random access memory. The term "hyper" is a Greek work meaning "above" or "more than." It is used as a prefix to technical concepts and products to convey a more advanced or more automatic capability. Further, "hyper" is a highly used laudatory term or prefix in the electronics and computer industry and is the subject of many U.S. Trademark Registrations in conjunction with other terms and designs in International Class 009.

COUNT II – MERELY GENERIC

9. Opposer restates and realleges Paragraphs 1 through 5, inclusive, above, of this Notice of Opposition, and hereby incorporates same as if fully set forth herein.

10. The HYPERRAM mark sought to be registered by Applicant is generic of memory devices and Opposer, Kingston, has an equal right to use the term generically.

11. The term HYPERRAM, whether one word or two, is used in the electronics and computer industry to mean and identify random-access memories which are active or of significant capabilities.

12. The Applicant is not exclusive in the use of "hyper" with "ram" to describe random access memory. The term "hyper" is a Greek work meaning "above" or "more than." It is used as a prefix to technical concepts and products to

convey a more advanced or more automatic capability. Further, "hyper" is a highly used laudatory term or prefix in the electronics and computer industry and is the subject of many U.S. Trademark Registrations in conjunction with other terms and designs in International Class 009.

WHEREFORE, Opposer Kingston believes and alleges that it will be damaged by registration of the HYPERRAM mark of Application Serial No. 86/189,104, as aforesaid, and prays that:

- A. Judgment in the present opposition be entered in favor of Opposer on Counts I and II;
- B. The present Opposition is sustained; and
- C. Registration of Application Serial No. 86/189,104 be rejected and refused.

Respectfully submitted,

KINGSTON TECHNOLOGY CORPORATION

Date: September 23, 2014

By /John D. McConaghy/ (Electronic signature)

John D. McConaghy
Breton Bocchieri
Christine Yang

Attorneys for Opposer

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Telephone: (213) 787-2500
Facsimile: (213) 687-0498

Law Offices of S.J. Christine Yang
17220 Newhope Street, Suite 101-102
Fountain Valley, CA. 92708

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this paper is being served upon all parties to this proceeding at the address recorded in the following manner on the date this filing is submitted, SEPTEMBER 23, 2014.

By Mail to:

Belinda J. Scrimenti
Pattishall, Mcauliffe, Newbury, Hilliard & Geraldts
200 S Wacker Dr Ste 2900
Chicago, Illinois 60606-5896

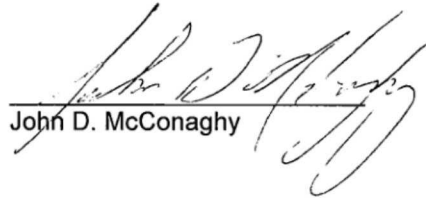

John D. McConaghy

EXHIBIT B



Press

Company Info

About
History
Facilities
Marketshare
Press Releases
Press Contacts
Press Images
Accolades
Contact Info
Careers

Quality & Reliability

Why Choose Kingston?
System-Specific Memory
Testing
Data Security

Corporate Compliance

Management System Certification
Environment
Social Responsibility

Legal

Legal Statement
Privacy Statement
Cookie Policy
Personal Data Protection Policy
Magnuson-Moss Act
SB 657 Disclosure
Anti-Corruption Policy
Anti-Counterfeit Policy

2015 HyperX Press Release

HyperX Achieves Fastest 128GB DDR4 Memory Kit

Fountain Valley, CA – May 11, 2015 – HyperX®, a division of Kingston® Technology Company, Inc., the independent world leader in memory products, today announced that it has created the world's fastest DDR4 128GB memory kit running at an astounding 3000MHz. The kit consists of eight 16GB HyperX Predator modules (16GB x 8) motherboard in an eight module, quad-channel configuration along with an MSI X99 MPOWER motherboard in an eight module, quad-channel configuration along with an Intel® Core™ i7 5820K processor.

During Computex en Taipei, HyperX will unleash a high-performance system featuring the upcoming 16GB modules powered by the recently released HyperX Predator M.2 PCIe SSD. The live demo will take place during the HyperX Roadshow Experience from June 4-7, 2015, at the ATT 4 FUN center, in Taipei. More details will be forthcoming about availability and pricing for HyperX Predator 16GB DDR4 modules and kits.

HyperX is the high-performance product division of Kingston Technology encompassing high-speed DDR4 and DDR3 memory, SSDs, USB Flash drives and gaming accessories. Targeted at gamers, overclockers and enthusiasts, HyperX is known throughout the world for quality, performance and innovation. HyperX is committed to eSports as it sponsors over 20 teams globally and is the main sponsor of Intel Extreme Masters. HyperX can be found at many shows including Brasil Game Show, China Joy, DreamHack, gamescom and PAX.

About HyperX

HyperX® is a division of Kingston Technology Company, Inc., the world's largest independent memory manufacturer. Established in 2002, HyperX is headquartered in Fountain Valley, California, USA. For more information, please call 800-337-8410 or visit www.kingston.com/hyperx

Kingston, the Kingston logo and HyperX are registered trademarks of Kingston Technology Corporation. All rights reserved. All other marks may be the property of their respective titleholders.

Past Press Release

[Press Home](#) | [2014](#) | [2013](#)



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Desktop/Notebook
Server
HyperX

Shop

View Cart
Login/Register
Where To Buy

Flash Products

Solid-State Drives
USB Flash Drives
Secure USB Flash Drives
SD Cards
microSD Cards
CompactFlash Cards
Card Readers
Wireless Devices
Embedded Storage

For Organizations

Why Kingston?
Business Resources
Alliances & Partners
KingstonCare
Customization Program

Company Info

About
Compliance
Press
Contact
Careers

Service & Support

Where To Buy
Support
Warranty
RMA Request
Product Verification
Contact Support

Website

Website Search
Privacy Policy
Site Map
Website Feedback

Follow Kingston

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HyperX Community
Promotions
Contests
Social Networks

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EXHIBIT C



Where to Buy

Support

English (US)

Products | Experience

MEMORY

SSD

USB DRIVES

HEADSET

PERIPHERALS

HyperX SSD



FURY



3K

Peripherals



Fan

Available in black or blue



Mouse Pads

A surface above the rest

WHY SWITCH TO SOLID-STATE DRIVES?

Solid-state drives can extend the lifecycle and dramatically improve the performance of a PC with higher speeds, greater stability and greater reliability. From booting up to opening applications, solid-state drives significantly cut down waiting time. Best of all, with no moving parts, solid-state drives are shock-proof, maintaining stability through the roughest conditions and extending the life of your desktop or notebook.

A Simple Swap

For notebook or desktop users, switching to solid-state drives or adding them to your system is simple with upgrade kits that include everything you need as well as software to clone your files and OS in just minutes. Kingston solid-state drives are backed by a two-, three- or five-year warranty, free technical support and legendary Kingston reliability.

HYPERX SSD VIDEOS

Why choose a PCIe SSD?

Speed is just one of the many benefits of choosing a PCIe SSD over a SATA solid-state drive.



Benefits of a Kingston HyperX SSD upgrade

Producer Tommy Coster on how SSDs benefit the music industry



More Videos

SSD performance improvements with HyperX

See how much faster SSDs are than hard drives



RAID 0 performance with SSD

Configure HyperX SSDs in a RAID array for better performance



DataTraveler HyperX
Predator

HyperX Cloud II
Headset

HyperX FURY Pro
Gaming Mouse Pad

A surface above the rest.

* Benchmark scores, results and test methodology stated in published reviews and articles are at the sole discretion of the reviewer and website or publication. Individual results may vary due to the revision of hardware, host hardware, software and usage.

This SSD is designed for use in desktop and notebook computer workloads and is not intended for Server environments.

1. Some of the listed capacity on a Flash storage device is used for formatting and other functions and thus is not available for data storage. As such, the actual available capacity for data storage is less than what is listed on the products. For more information, go to Kingston's Flash Memory Guide.
2. Based on "out-of-box performance." Speed may vary due to host hardware, software, and usage.
3. Total Bytes Written (TBW) is derived from the JEDEC Workload (JESD219A).
4. Drive Writes Per Day (DWPD)

Note: The over provisioning can only be modified at the user's own risk and will require third party software to partition the drive. Kingston recommends that only experienced and knowledgeable users attempt to customize the over provisioning area. Kingston will not provide support or any additional tools to execute this feature.
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Memory FURY Savage Predator Impact	Flash Solid-State Drives USB Flash Drives Peripherals Headset Fan Mouse pads	Company Info About HyperX Compliance Press Contact Careers	Service & Support Where To Buy Support Warranty RMA Request Product Verification Contact Support	Website Website Search Privacy Policy Website Feedback	Shop View Cart Login/Register Where To Buy Follow HyperX Community
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Faster speeds for serious users.

Kingston's HyperX® SSD combines the latest SandForce® controller technology with premium NAND Flash, reducing load times while increasing performance and endurance. It provides high-speed SATA Rev 3.0 (6Gb/s) transfer speeds for larger bandwidth, which power users require for advanced gaming, multitasking and multimedia computing power.

Kingston's HyperX SSD lets users load games and applications faster, increase frames per second (FPS) and quickly transfer and edit large media files. It's cool, silent and requires less power with no additional cooling requirements.

When configuring the HyperX SSD partition, the user can choose between having the maximum available capacity for data storage, or give up a little space to increase performance and endurance. This additional space is called over provisioning¹ on an SSD. The amount of performance and endurance increase depends upon the type of data being stored on the HyperX SSD. The more data that is MPEG, JPG, ZIP, ARC, file types, the greater the benefit for this increased over provisioning.

HyperX SSD uses an advanced wear leveling technology that distributes writes evenly across all the Flash blocks in the SSD to maximize overall drive endurance. Additionally, this ensures that the individual Flash memory blocks are consumed at a very balanced rate, not to exceed a 2% difference between the most often written blocks and least written. This enables the HyperX SSD to provide the longest possible life for the user while maintaining optimal performance.

HyperX SSD is covered by a three-year warranty and backed by 24/7 live technical support and legendary Kingston® reliability.

- > SandForce Driven
- > SATA Rev. 3 (6Gb/s)

HyperX SSD



Also available as a HyperX Upgrade Kit:

- Acronis Migration Software
- HyperX 3.5" Desktop mounting plate
- HyperX USB External Drive Bay
- HyperX Multi-head Screwdriver
- HyperX colored SATA Rev 3.0 (6Gb/s) cable

Applications

- Decreased load times of high resolution PC games
- Increased frame rates per second for a better gaming experience
- HD Video Rendering, Encoding, and Editing
- Adobe Applications (Photoshop, Premiere, Light Room)
- Pro Tools and other Professional Digital Audio applications
- Faster transfers of large media files
- Multitasking
- AutoCAD
- Movie Downloads, Transfers and Syncs

Features/specs on reverse >>

HyperX SSD

FEATURES/SPECIFICATIONS

- > **Form factor** 2.5"
- > **Controller** SandForce® SF-2281
- > **Components** Intel® 25nm Compute Quality MLC NAND (5k P/E Cycles)
- > **Interface** SATA Rev 3.0 (6Gb/s), SATA Rev 2.0 (3Gb/s)
- > **Capacities**² 120GB, 240GB
- > **Sequential reads** 6Gb/s³ 555MB/s for all capacities
- > **Sequential writes** 6Gb/s 510MB/s for all capacities
- > **Sustained Random 4K R/W**
120GB – 20,000/60,000 IOPS
240GB – 40,000/60,000 IOPS
- > **Max Random 4K R/W**⁴
120GB – 95,000/70,000 IOPS
240GB – 95,000/60,000 IOPS
- > **PCMARK® Vantage HDD Suite Score**
120GB – 81,196
240GB – 81,394
- > **Supports S.M.A.R.T., TRIM, and Garbage Collection**
- > **Power Consumption**
120GB: 0.455 W (TYP) Idle / 1.6 W (TYP) Read / 2.0 W (TYP) Write
240GB: 0.455 W (TYP) Idle / 1.5 W (TYP) Read / 2.05 W (TYP) Write
- > **Dimensions** 69.85mm x 100mm x 9.5mm
- > **Weight** 94g
- > **Operating temperatures** 0°C ~ 70°C
- > **Storage temperatures** -40°C ~ 85°C
- > **Shock Resistance** 1500G
- > **Vibration operating** 2.17G
- > **Vibration non-operating** 20G
- > **MTBF** 1,000,000 Hrs

*Test System: Asus P8P67 Motherboard, Intel Core i7 2600k 3.4GHz CPU,
4GB System Memory, NVIDIA GTX 460 Video Card*



FLASH-100
SOLID-STATE
HYPERX
STORE
FAST
UPGRADE
DRIVE
MEMORY
KINGSTON
MEMORY



COMPATIBILITY TABLE

Operating System	File Transfer
Windows® 7	Yes
Windows Vista® (SP1, SP2)	Yes
Windows XP (SP1, SP2, SP3)	Yes
Windows 2000 (SP4)	Yes
Mac OS (v. 10.3.x +)	Yes
Linux (v. 2.6.x +)	Yes

KINGSTON PART NUMBERS

SH100S3/120G (stand-alone drive)
SH100S3/240G (stand-alone drive)
SH100S3B/120G (HyperX Upgrade Kit)
SH100S3B/240G (HyperX Upgrade Kit)

1 Note: The over provisioning can only be modified at the user's own risk and will require third party software to partition the drive. Kingston recommends that only experienced and knowledgeable users attempt to customize the over provisioning area. Kingston will not provide support or any additional tools to execute this feature.

2 Please Note: Some of the listed capacity on a Flash storage device is used for formatting and other functions and thus is not available for data storage. As such, the actual available capacity for data storage is less than what is listed on the products. For more information, go to Kingston's Flash memory Guide at kingston.com/flash_memory_guide.

3 Based on "out-of-box performance" with ATTO Disk Benchmark 2.41. Speed may vary due to host hardware, software, and usage.

4 Based on "out-of-box performance" with IOMeter08.
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EXHIBIT D



The most powerful HyperX USB Flash drive combines extreme speed with high capacity.

Kingston's DataTraveler® HyperX® Predator USB Flash drive offers the fastest speeds from Kingston® and the highest capacities available in the world. Speeds up to 240MB/s read and 160MB/s write¹ (in USB 3.0) mean users can quickly access, edit and transfer their files and applications directly from the drive with no performance lag. Capacities up to 1TB² allow users to store their entire digital world on the DT HyperX Predator.

This prestigious drive is compliant with next-generation USB 3.0 specifications to take advantage of USB 3.0 ports in newer notebooks and desktops, and it includes a USB 3.0 dongle. It's also backwards compatible with USB 2.0 systems to maximize current investments.

DT HyperX Predator offers superior quality in a high-end design. Its zinc alloy metal casing makes it shock-resistant; all drives must pass extensive durability and shock testing. It also features a custom Kingston key ring and HyperX Valet Keychain for added value.

For added peace of mind, this drive is backed by a five-year warranty, free technical support and the legendary reliability that makes Kingston the world's independent memory leader.

- > Dramatic speed up to 240MB/s
- > Monstrous capacity up to 1TB
- > Exclusive metal casing with stylish finish

DataTraveler HyperX Predator



SPEED	
READ 240MB/s ¹	WRITE 160MB/s ¹
¹ Based on Internal Testing	

Features/specs on reverse >>

DataTraveler HyperX Predator

FEATURES/BENEFITS

- > **Highest capacities** — uncompromised data storage to carry your digital world on a portable USB drive
- > **Highest performance** — unparalleled speeds to save time while transferring content-rich data
- > **USB 3.0** — latest USB standard guarantees backwards compatibility with USB 2.0
- > **Zinc alloy metal casing** — resilient protection for data in a cutting-edge design
- > **HyperX Valet Keychain** — exclusive accessory for a stylish twist to portable storage
- > **File format** — exFAT
- > **Guaranteed** — five-year warranty and free technical support for added peace of mind

SPECIFICATIONS

- > **Capacities**² 512GB, 1TB
- > **Speed**¹ USB 3.0: 240MB/s read and 160MB/s write
USB 2.0: 30MB/s read and 30MB/s write
- > **Backwards compatible** with USB 2.0
- > **Dimensions** without key ring: 2.8346" x 1.0606" x 0.8268"
(72mm x 26.94mm x 21mm)
with key ring: 3.4854" x 1.0606" x 0.8268"
(88.53mm x 26.94mm x 21mm)
- > **Operating Temperature** 32°F to 140°F (0°C to 60°C)
- > **Storage Temperature** -4°F to 185°F (-20°C to 85°C)



HyperX is a division of Kingston.

¹ Speed may vary due to host hardware, software and usage.

² Some of the listed capacity on a Flash storage device is used for formatting and other functions and thus is not available for data storage. As such, the actual available capacity for data storage is less than what is listed on the products. For more information, go to Kingston's Flash memory Guide at kingston.com/flashguide.

³ Requires a host device with a USB 3.0 port

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SUPREME PERFORMANCE
STYLISH
PHOTOS
GAMES
ENTHUSIAST
PERFORMANCE
USB 3.0
FILES
VIDEO



COMPATIBILITY TABLE

Operating System	USB 3.0 ³	USB 2.0
Windows® 8.1	✓	✓
Windows 8	✓	✓
Windows 7 (SP1)	✓	✓
Windows Vista® (SP1, SP2)	✓	✓
Mac OS X v. 10.6.x +	✓	✓

KINGSTON PART NUMBERS

DTHXP30/512GB

DTHXP30/1TB



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2013 HyperX Press Release

Kingston Technology Ships HyperX Memory Kits with Black PCB

- HyperX Beast and black Product Lines to Feature Black PCB
- All-black Look Complements System Builds Where Color and Design is Key

Fountain Valley, CA -- March 25, 2013 -- Kingston Technology Company Inc., the independent world leader in memory products, continues to celebrate its 10th HyperX anniversary by announcing all-new black printed circuit boards (PCB) on two of its product lines. Kingston's high-performance HyperX® Beast and entry-level enthusiast 'black' lines will incorporate black PCB under the signature heat spreader designs.



HyperX Beast, a part of the Predator family, matches large capacity with ultra-fast frequencies. Now featuring black PCB, HyperX Beast is available in various dual- and quad-channel kits in capacities from 8GB to 64GB and speeds up to an ultra-fast 2400MHz. It is perfect for hardcore gamers, PC modders, content creators and overclockers. The 2133MHz, 64GB and 2400MHz, 32GB Beast memory are the **fastest and highest capacity** certified Intel® XMP-ready kits on the market.

HyperX black is available as single 4GB and 8GB module or as an 8GB or 16GB dual-channel kit in 1333- or 1600MHz frequencies. HyperX black is ideal as a cost-efficient performance upgrade for an overall faster system or for increased in-game frames-per-second rate.

"Our customers and fans have asked us to come out with HyperX memory featuring black PCBs to better match their system designs," said Larry Yang, HyperX business manager, Kingston. "We are able to match good looks with high performance. The black on black combination allows for easy pairing with any color component on the market."

Kingston is celebrating 25 years in the memory industry. The company was founded on October 17, 1987, and has grown to become the largest third-party memory manufacturer in the world. The 25th anniversary video and information including a timeline of Kingston's history can be found on the [Kingston 25th anniversary webpage](#). In addition, HyperX memory is celebrating its 10th anniversary. The first HyperX high-performance memory module was released in November 2002.

Kingston HyperX Beast and black Memory Features and Specifications:

- Unique:** features a dynamic new heatspreader to maximize thermal dissipation, features a Black PCB
- XMP profiles:** easy to enable, factory configured for best maximum performance
- Reliable:** 100-percent factory tested
- Guaranteed:** lifetime warranty, free technical support
- Easy to install**
- Capacities:** 4GB, 8GB, 16GB, 32GB, 64GB in various kits of 2, 4 and 8
- Frequency speed:** 1333MHz–2400MHz
- Operating temperature:** 0°C to 85°C
- Storage temperature:** -55°C to 100°C
- Dimensions:** 132mm X 41.4mm (Beast), 133.35mm X 30mm (black)
- Available in a variety of CAS latencies**
- Voltage:** 1.5V-1.65V
- Compatible:** tested with all popular brands of motherboards
- DDR3 only**

Kingston HyperX Beast Memory¹

Part Number	Capacity and Features
KHX16C9T3K2/8X	8GB 1600MHz DDR3 CL9 DIMM (kit of 2) Beast series XMP
KHX18C9T3K2/8X	8GB 1866MHz DDR3 CL9 DIMM (kit of 2) Beast series XMP
KHX21C11T3K2/8X	8GB 2133MHz DDR3 CL11 DIMM (kit of 2) Beast series XMP
KHX24C11T3K2/8X	8GB 2400MHz DDR3 CL11 DIMM (kit of 2) Beast series XMP
KHX16C9T3K2/16X	16GB 1600MHz DDR3 CL9 DIMM (kit of 2) Beast series XMP
KHX16C9T3K4/16X	16GB 1600MHz DDR3 CL9 DIMM (kit of 4) Beast series XMP
KHX18C9T3K4/16X	16GB 1866MHz DDR3 CL9 DIMM (kit of 4) Beast series XMP

KHX18C10T3K2/16X	16GB 1866MHz DDR3 CL10 DIMM (kit of 2) Beast series XMP
KHX21C11T3K2/16X	16GB 2133MHz DDR3 CL11 DIMM (kit of 2) Beast series XMP
KHX24C11T3K2/16X	16GB 2400MHz DDR3 CL11 DIMM (kit of 2) Beast series XMP
KHX24C11T3K4/16X	16GB 2400MHz DDR3 CL11 DIMM (kit of 4) Beast series XMP
KHX16C9T3K4/32X	32GB 1600MHz DDR3 CL9 DIMM (kit of 4) Beast series XMP
KHX18C10T3K4/32X	32GB 1866MHz DDR3 CL10 DIMM (kit of 4) Beast series XMP
KHX21C11T3K4/32X	32GB 2133MHz DDR3 CL11 DIMM (kit of 4) Beast series XMP
KHX24C11T3K4/32X	32GB 2400MHz DDR3 CL11 DIMM (kit of 4) Beast series XMP
KHX18C10T3K8/64X	64GB 1866MHz DDR3 CL10 DIMM (kit of 8) Beast series XMP
KHX21C11T3FK8/64X	64GB 2133MHz DDR3 CL11 DIMM (kit of 8) w/fan Beast series XMP

1. Please check your favorite Kingston e-tailer or reseller for pricing.

Kingston HyperX black Memory¹

Part Number	Capacity and Features
KHX13C9B1B/4	4GB 1333MHz CL9 DIMM black series
KHX16C9B1B/4	4GB 1600MHz CL9 DIMM black series
KHX13C9B1B/8	8GB 1333MHz CL9 DIMM black series
KHX13C9B1BK2/8	8GB 1333MHz CL9 DIMM (kit of 2) black series
KHX16C9B1BK2/8	8GB 1600MHz CL9 DIMM (kit of 2) black series
KHX16C9B1BK2/8X	8GB 1600MHz CL9 DIMM black series XMP
KHX16C10B1B/8	8GB 1600MHz CL10 DIMM black series
KHX16C10B1BK2/16	16GB 1600MHz CL10 DIMM (kit of 2) black series
KHX16C10B1BK2/16X	16GB 1600MHz CL10 DIMM (kit of 2) black series XMP

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Kingston can be found on:

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Twitter: <http://twitter.com/kingstonhq>

LinkedIn: <http://www.linkedin.com/company/kingston>

About HyperX

HyperX® is a division of Kingston Technology Company, Inc., the world's largest independent memory manufacturer. Established in 2002, HyperX is headquartered in Fountain Valley, California, USA. For more information, please call 800-337-8410 or visit www.kingston.com/hyperx

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Posted by [Nathan Kirsch](#) | Wed, Feb 13, 2008 - 12:00 AM

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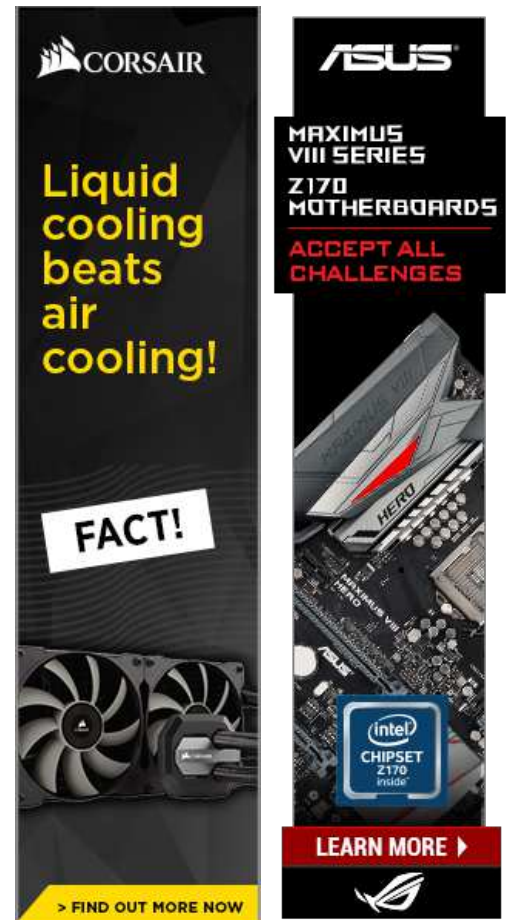
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The DataTraveler HyperX features a capless design with a nifty looking metallic blue case and black rubber grips for easy handling that looks great. The image above shows the drive shows that in the [storage](#)  state the USB connector is hidden safely in the housing, but for use it can be extended with the slider on the side of the housing. The blue LED activity indicator can also be seen on the side just above the capacity markings. To use the Flash drive, just plug DataTraveler HyperX into an available USB port and you are on your way to transferring photos, videos, music and [data](#)  to carry with you to your second system, notebook or fellow enthusiasts system. It works with Windows 2000, Windows XP, Windows Vista, Mac OS 10 and Linux 2.6 and above. If you're running Windows Vista, then it should be noted that the Kingston DataTraveler HyperX is enhanced for Windows ReadyBoost too.



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- Storage Temperature – -4° to 185° F (-20° to 85° C)
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If you are curious how this will work on a key chain, then fear not as it comes with everything you need! Overall, the Kingston DataTraveler is what you would expect. It features a clean capless design, fast transfer speeds and the blue HyperX branding that has been around for nearly six years now! Let's take a look at the drive performance against several other common flash drives.

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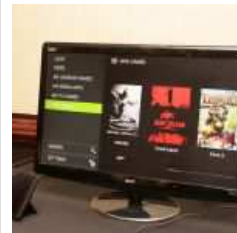
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2015 HyperX Press Release

HyperX Achieves Fastest 128GB DDR4 Memory Kit

Fountain Valley, CA – May 11, 2015 – HyperX®, a division of Kingston® Technology Company, Inc., the independent world leader in memory products, today announced that it has created the world's fastest DDR4 128GB memory kit running at an astounding 3000MHz. The kit consists of eight 16GB HyperX Predator modules (16GB x 8) motherboard in an eight module, quad-channel configuration along with an MSI X99 MPOWER motherboard in an eight module, quad-channel configuration along with an Intel® Core™ i7 5820K processor.

During Computex en Taipei, HyperX will unleash a high-performance system featuring the upcoming 16GB modules powered by the recently released HyperX Predator M.2 PCIe SSD. The live demo will take place during the HyperX Roadshow Experience from June 4-7, 2015, at the ATT 4 FUN center, in Taipei. More details will be forthcoming about availability and pricing for HyperX Predator 16GB DDR4 modules and kits.

HyperX is the high-performance product division of Kingston Technology encompassing high-speed DDR4 and DDR3 memory, SSDs, USB Flash drives and gaming accessories. Targeted at gamers, overclockers and enthusiasts, HyperX is known throughout the world for quality, performance and innovation. HyperX is committed to eSports as it sponsors over 20 teams globally and is the main sponsor of Intel Extreme Masters. HyperX can be found at many shows including Brasil Game Show, China Joy, DreamHack, gamescom and PAX.

About HyperX

HyperX® is a division of Kingston Technology Company, Inc., the world's largest independent memory manufacturer. Established in 2002, HyperX is headquartered in Fountain Valley, California, USA. For more information, please call 800-337-8410 or visit www.kingston.com/hyperx

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HyperX Mouse Pads

**Skyn**

The Skyn to win

**FURY**

A surface above the rest



HyperX Skyn Mouse Pad

HyperX® has the Skyn to win with two mouse pad textures available individually or in a dual pack. Choose the control surface for increased gaming accuracy or the speed surface for fast-moving action. Both are ideal for everyone from noobs to pros and feature ultra-thin, anti-microbial material designed to keep you winning for hours. HyperX Skyn works with optical, wireless or laser mice and sticks to most surfaces for high performance at home or on the road.

Features

- Choose the Control surface for increased accuracy or the Speed surface for fast-moving action
- Paper-thin gaming-grade hard surface for a seamless transition between desktop and mouse pad
- Material designed for prolonged use with anti-microbial surface
- Compatible with optical, wireless or laser mice
- Adhesive bottom with a pull-off tab that sticks to most surfaces and is easily removable
- Two-year warranty

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"I don't hesitate one bit giving the HyperX Skyn mouse pads our Highly Recommended award." [Read Full Review](#)

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Kingston DataTraveler HyperX 8GB USB Flash Drive

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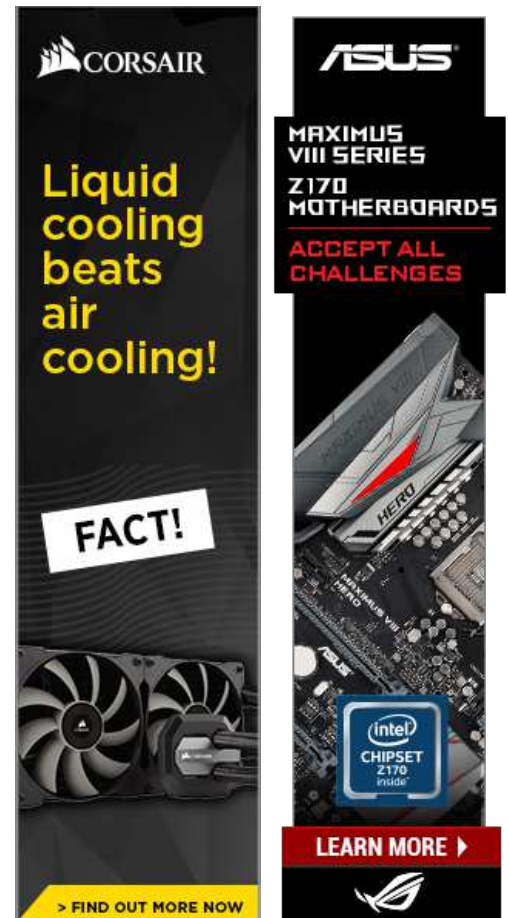
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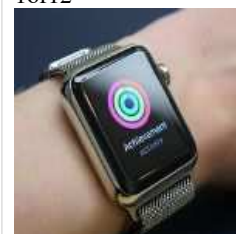
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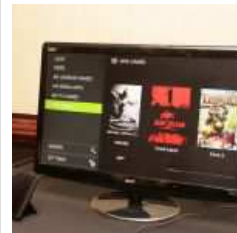
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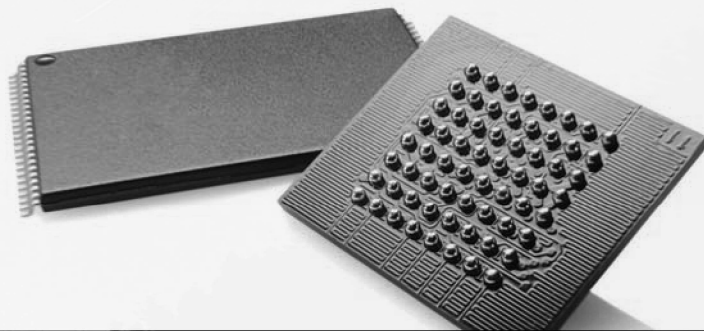
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